



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J&J Maintenance, Inc.--Reconsideration

File: B-240799.4; B-240802.4

Date: April 10, 1991

Donald E. Barnhill, Esq., East & Barnhill, for the protester. Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior dismissal due to protester's failure to diligently pursue grounds of protest is denied where protester fails to show any error of fact or law that would warrant reversal.

DECISION

J&J Maintenance, Inc. requests reconsideration of our decision in J&J Maintenance, Inc., B-240799.2; B-240802.2, Feb. 27, 1991, 91-1 CPD ¶ ____ in which we dismissed its protest against the award of a contract to Hospital Shared Services of Colorado (HSSC), under invitation for bids (IFB) No. DAKF23-90-B-0045, step two of a two-step sealed bid acquisition, issued by the Department of the Army for maintenance services for the United States Army Medical and Dental Activities at Fort Campbell, Kentucky.

We deny the request for reconsideration because the request provides no basis for reconsidering our prior decision.

J&J Maintenance initially protested this award on August 15, 1990, and supplemented it on August 22, generally alleging that the agency conducted improper discussions with HSSC under step one of the two-step sealed bid acquisition (request for technical proposals (RFTP) No. DAKF23-90-R-0301) and that HSSC did not meet the minimum staffing requirements. On December 19, our Office dismissed that protest in part and denied it in part. J&J Maintenance, Inc., B-240799; B-240802, Dec. 19, 1990, 90-2 CPD ¶ 504.

On December 28, J&J Maintenance protested again, alleging that HSSC's bid was based on a latent ambiguity in the solicitation's specifications relating to the use of

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Housekeeper I and Housekeeper II wage rates, \$5.80 per hour and \$6.19 per hour, respectively. The protester alleged that the agency sought reclassification by the Department of Labor (DOL) for the housekeeping employees to the lower rate under J&J Maintenance's current contract,^{1/} and that this could result in a \$100,000 change in the amount bid.

We dismissed this protest because our Regulations do not contemplate the piecemeal presentation of arguments or information relating to a protest, and we held that the protester's delay in seeking the DOL information for approximately 2 months after it filed its original protest, and then its further delay of almost 2 months before checking on the status of the request, did not constitute diligent pursuit. We further held that even if the protester had diligently pursued this information, the protest was nevertheless untimely, because it filed the protest 11 working days after J&J Maintenance acknowledged it received this new information.^{2/}

J&J Maintenance objects to our conclusion that it did not diligently pursue this ground of protest, arguing that "[w]ith two agencies involved, the Contracting Office, as well as its agent the Department of Labor, the contractor certainly understood, that some decision was being made." The protester also alleges that the DOL's reclassification did not occur until some time in December.

^{1/} J&J Maintenance was the incumbent contractor who performed these services.


^{2/} J&J's protest was time/date stamped as received on the morning of the 11th working day after it allegedly became aware of its basis for protest. Our Bid Protest Regulations specifically provide that the time "for filing any document . . . with the General Accounting Office expires at 5:30 p.m., . . . on the last day on which such filing may be made." 4 C.F.R. § 21.0(e) (1991). J&J Maintenance disputes our finding that it filed on the 11th working day, arguing that it began transmission of its protest by telefax machine at 5:28 p.m., on the 10th working day, and that although transmission was not complete until 5:34 p.m., all that is required under our timeliness rules is that the first page of a protest is timely filed. We will not address this issue here, since we find that this protest issue was not diligently pursued and, therefore, no useful purpose would be served by examining this issue again.

The protester essentially disagrees with our determination that it did not diligently pursue this issue of protest. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Mere disagreement with our prior decision does not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

A protester who is challenging an award or proposed award on one ground should diligently pursue information which may reveal additional grounds of protest. S.A.F.E. Export Corp., B-213026, Feb. 10, 1984, 84-1 CPD ¶ 165. Moreover, the diligent pursuit of additional grounds of protest is a continuing obligation of the protester while its initial protest is pending. Id. J&J Maintenance did not fulfill this obligation.

J&J Maintenance filed its protest against the award of a contract to HSSC on August 15, and yet waited until October 23, after it received the agency report and an informal conference was conducted on its protest, to even begin its investigation at the DOL of the applicable wage rates. Under these circumstances, the protester did not fulfill its continuing obligation to pursue diligently relevant information pertaining to possible protest issues. Further, although the protester alleges that the DOL did not reclassify the wage rate category until December, all the record shows is that J&J Maintenance's suspicions allegedly were confirmed in December, not that reclassification had in fact occurred in December.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel